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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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AUG 16 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	IB Docket No.96-111
Amendment of the Commission's	)	
Regulatory Policies to Allow	)	CC Docket No. 93-23
Non-U.S.-Licensed Space Stations	)	RM-7931
To Provide Domestic and	)	
International Satellite Service	)	File No. ISP-92-007
In the United States	)	

REPLY COMMENTS OF CAPITAL CITIES/ABC, INC., CBS INC., NATIONAL BROADCASTING COMPANY, INC., AND TURNER BROADCASTING SYSTEM, INC.

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SUMMARY

Widely diverging views are expressed in the initial comments regarding whether adoption of an effective competitive opportunities for satellites ("ECO-Sat") test would achieve the Commission's objective of encouraging the opening of foreign marketplaces to U.S.-licensed satellites and, if so, the parameters of any ECO-Sat test that should be applied. The substantial disagreements among various sectors of the satellite industry illustrate the difficulty of fashioning a meaningful ECO-Sat test that appropriately takes into account the varying characteristics of individual satellite transmission services.

The Networks agree with the initial comments which recommend that in no event should the Commission apply the ECO-Sat test indiscriminately to all satellite services. In light of the current lack of alternatives to satellites for overseas video transmission and the need for immediacy in their program operations, the Networks oppose the application of the ECO-Sat test to international video transmission services and associated coordination and control circuits, especially the occasional use video transmission services used for coverage of fast-breaking news events.

The initial comments support the Networks' recommendation that if, despite their opposition, the Commission were to adopt an ECO-Sat test applicable to international video transmission services, the Commission at the least should modify the test to reflect real-world, practical considerations. In particular, the Networks endorse the proposal that the Commission not apply the ECO-Sat test in situations where U.S. licensed satellite capacity is either insufficient, economically impractical or unavailable. Moreover, from their perspective as major users of satellite services, the Networks oppose the recommendation from the competitors of INTELSAT and INMARSAT ("the IGOs") that the Commission not transfer automatically existing IGO earth station authorizations to the IGO affiliates or successors that may be created in the future. The failure to make such automatic transfers could cause severe disruptions to the operations and long-term planning of those U.S. end users which happen to rely on the portion of IGO capacity that is transferred to a successor organization.

The Networks are sympathetic to the argument that COMSAT be allowed to use some INTELSAT capacity for U.S. domestic services. Allowing COMSAT/INTELSAT to provide a limited amount of domestic service may have beneficial effects on competition in the U.S. domestic market and may ease the continuing shortage of domestic occasional use C-band capacity.

The initial comments provide support for the Networks' recommendation that the Commission not implement the ECO-Sat test as it initially proposed, that is, on a case-by-case basis through individual end user applications for earth station licenses. Indeed, the initial comments provide multiple reasons why the Commission should allow the non-U.S. satellite operator itself to apply for ECO-Sat authority, rather than requiring each individual U.S. earth station operator to do so. Moreover, under no circumstances should the Commission apply the ECO-Sat test to earth station applications filed before the DISCO II decision is adopted. To do otherwise, the Commission would be prejudging the very issues on which it is soliciting comment, such as whether or not to apply the ECO-Sat test to all types of satellite services.

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Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (collectively, "the Networks"), by their attorneys, hereby file this reply to the initial comments submitted in the above-captioned rulemaking proceeding, generally known as DISCO II.[1/]

I. INTRODUCTION

On July 15, 1996, the Networks filed initial comments on the proposed ECO-Sat test under which the Commission would authorize non-U.S. satellite systems to provide satellite services to, from, or within the United States only upon a determination made after public notice and comment that U.S.-licensed satellites are granted equivalent competitive opportunities to serve the "home

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1/ See Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111, FCC 96-210, May 14, 1996 ("Notice").

market" of the non-U.S. satellite and applicable "route markets" that the non-U.S. satellite proposes to serve, or at least a "critical mass" of the foreign markets served by the non-U.S. satellite.

The Networks explained that, as operators of broadcast and cable television networks, they are major users of satellite services and require the ability to transmit video programming materials and associated voice and data communications from anywhere to anywhere on short notice at a reasonable price using whatever transmission capacity is reasonably available. Networks at 11-12. The Networks further explained that for their overseas video transmission requirements they rely exclusively on satellites because underseas fiber optic cables are not yet considered a meaningful competitive alternative for reasons related to technical performance, cost, connectivity and operational flexibility. Id.

In light of the current lack of alternatives to satellites for overseas video transmissions and because it is impossible to predict where and when the next newsworthy event will occur, the Networks opposed the application of the proposed ECO-Sat test to international video transmission services and associated coordination and control circuits. Id. at 13. In the event the Commission nevertheless were to adopt an ECO-Sat test applicable to video transmission services despite their opposition, the Networks recommended modifications to the test to reflect real-world, practical considerations. Id. at 16-22.

II. THE INITIAL COMMENTS ILLUSTRATE THE DIFFICULTY OF FASHIONING A MEANINGFUL ECO-SAT TEST THAT APPROPRIATELY TAKES INTO ACCOUNT THE VARIOUS FACTORS RELEVANT TO INDIVIDUAL SATELLITE SERVICES

Almost all the parties filing initial comments endorse the Commission's objectives in this proceeding to encourage the opening of the U.S. satellite marketplace to increased competition from non-U.S. satellites and to encourage the opening of foreign marketplaces to U.S.-licensed satellites. The initial comments, however, vary widely regarding whether adoption of an ECO-Sat test actually would achieve such market opening objectives and, if so, the parameters of the ECO-Sat test that should be applied.

Several parties argue that adoption of an ECO-Sat test will not be sufficient to open most foreign markets to competition from U.S. satellites. They claim that because most countries do not have satellites that seek access to the U.S. market, the ECO-Sat test will not provide these countries with an incentive to open their markets. See, e.g., PanAmSat at 1; COMSAT at 20-23. Other parties caution that Commission adoption of a strict reciprocity standard might lead to retaliation by foreign countries or could embroil the Commission in trade issues that more appropriately are addressed by Executive Branch agencies. See, e.g., DIRECTV, Inc., DIRECTV International, Inc. and Hughes Communications Galaxy, Inc. ("Hughes") at 4, 8-9. Still others describe the various implementation problems associated with applying the ECO-Sat test to point-to-multi-point satellite services and the landing of satellite signals in one country for terrestrial transport into

adjoining countries. Charter Communications at 3; Transworld Communications at 3.

Even those parties supporting adoption of the ECO-Sat test argue for widely different implementation proposals. For example, while AT&T, Orion, MCI and others support application of both the proposed "home market" and "route market" tests, WorldCom contends that the route market test should supply only to the top 50 foreign markets. WorldCom at 5. Others argue that any general ECO-Sat rules adopted should not apply at all either to Russian satellites, Transworld at 5, or to Mexican satellites, Charter at 5. While some parties argue that application of the "bi-lateral" ECO-Sat test on a route-by-route basis simply is not appropriate for so-called "Big LEO" systems which are inherently global in nature, see, e.g., AirTouch at 4, the proposed "critical mass" test also fails to attract any type of consensus. Even though several parties endorse, at least in part, application of the proposed "critical mass" test to certain types of satellite services, Teledesic Corporation at 4; Columbia Communications Corporation at 23, many others reject the test as inherently ambiguous, impractical or ineffective. AT&T at 6; ICO Global at 24-28; Hughes at 13; Orion at 8. Another party argues that the Commission should not apply the ECO-Sat test to the provision of any traditional INMARSAT aeronautical or maritime service, international or

domestic, because of overriding safety and access concerns. BT North America at 3-4.

Many parties oppose the Commission's proposal to apply the ECO-Sat test to just three broad categories of satellite services: direct-to-home (DTH) video services (including Direct Broadcast Services (DBS)), mobile satellite services (MSS), and traditional fixed-satellite services (FSS). They argue that such treatment is inappropriate because the various discrete satellite services within these categories differ significantly in terms of competitive opportunities, technical characteristics and service requirements. For example, several U.S.-licensed FSS satellite operators recommend that the Commission's ECO-Sat analysis differentiate among the various subcategories of FSS services, such as VSAT, voice, video and data. Orion at 9; Columbia at 13. Other U.S.-licensed satellite service providers contend that different subcategories of MSS services must be treated separately for purposes of ECO-Sat analysis because each discrete subcategory has unique service characteristics and may not be competitive with other services in the same broad MSS category. See Teledesic Corporation at 4-5; Newcomb and Mobile Datacom at 7-10.

The divergent positions taken in the initial comments illustrate the difficulty of fashioning an ECO-Sat test that is workable in implementation, meaningful for the wide variety of satellite services currently available, and effective in achieving the Commission's market opening objectives, but yet does not compromise the satisfaction of U.S. end users' service

requirements. The Networks agree with those initial commenters who contend that, in any event, the Commission should not apply the ECO-Sat test indiscriminately across broad categories such as FSS. In order to fulfill their newsgathering, information distribution and programming missions, broadcasters and cablecasters must be allowed to transmit and receive international video programming materials and associated audio and data communications without advance warning and on short notice, using whatever satellite capacity is reasonably available. If necessary, therefore, the Commission should treat international video transmission services distinctly for purposes of the proposed ECO-Sat test and should allow broadcast and cable organizations to use any non-U.S. satellite to transmit their international video programming materials, especially for occasional-use video transmissions.

III. THE INITIAL COMMENTS SUPPORT THE NETWORKS' RECOMMENDATION TO MODIFY THE ECO-SAT TEST TO REFLECT REAL-WORLD, PRACTICAL CONSIDERATIONS, INCLUDING THE NEED TO GRANDFATHER EXISTING SERVICES ON INTELSAT SATELLITES WHICH MAY BE TRANSFERRED TO A PRIVATIZED AFFILIATE

A significant number of the parties filing initial comments agree that if the Commission were to adopt the ECO-Sat test, it should apply the test in a flexible, rather than in a rigid, manner. See, e.g., Columbia at 14; WorldCom at 5-6; Hughes at 17. The Networks endorse the initial comments in this regard. In particular, as proposed by at least one other commenter in addition to the Networks, the Commission should forbear from applying the ECO-Sat test where "U.S. licensed satellite capacity is either insufficient, economically impractical or unavailable" to

provide the proposed service. Newcomb and Mobile Datacom at 5; Networks at 16-17.

The Commission also should take into account practical, real-world considerations on another important issue: whether or not the Commission should transfer automatically existing earth station authorizations to access satellites of intergovernmental organizations ("IGOs") such as INTELSAT or INMARSAT to the IGOs' subsidiaries, affiliates or successors. See Notice at para. 74. Several U.S. satellite operators which are in competition with the IGOs support the Commission's proposal that such authorizations not be transferred automatically to the successor organizations. PanAmSat at 5; Columbia at 23-24; Orion at 14; Loral at 27; Orbcomm at 6. Although none of these carriers even attempt to address the likely impact of their recommendation on U.S. end users, the Commission should make a more searching inquiry concerning the effects of its proposal. In fact, failure to transfer existing IGO earth station authorizations automatically to the successor operators of those satellites may cause disruptions to the operations and long-term planning of U.S. end users, such as broadcasters and cablecasters which currently rely on INTELSAT capacity for a significant portion of their international video transmission service requirements. The Networks, therefore, urge the Commission to grandfather U.S. broadcasters' and cablecasters' existing authorizations to access INTELSAT or any other non-U.S. satellite system, regardless of whether any changes subsequently

occur in the ownership of the non-U.S. satellite or whether the provision of services is transferred to a replacement satellite.

IV. THE COMMISSION SHOULD CONSIDER ALLOWING COMSAT TO PROVIDE A LIMITED AMOUNT OF DOMESTIC SERVICE USING INTELSAT CAPACITY

In their initial comments, COMSAT and INTELSAT urge the Commission to eliminate any restrictions on the use of INTELSAT capacity to provide U.S. domestic service. They claim that application of the ECO-Sat test to INTELSAT capacity would not, in and of itself, place sufficient pressure on individual foreign administrations to open their communications markets to U.S. satellite service providers, but would serve only to restrict the choices available to U.S. customers and limit domestic competition. COMSAT at 4-5; INTELSAT at 9. The competitors of COMSAT and INTELSAT, however, oppose the use of INTELSAT capacity for U.S. domestic service. They argue that COMSAT could cross-subsidize U.S. domestic services with international monopoly revenues and that it would be premature to allow INTELSAT capacity to be used for U.S. domestic service until the proposed restructuring of INTELSAT has been completed. PanAmSat at 6; AT&T at 14; Columbia at 22; Orion at 15.

The Networks are sympathetic to the proposal to allow COMSAT to use INTELSAT capacity for U.S. domestic service without undue delay. Section 102(d) of the Communications Satellite Act of 1962 unquestionably provides the Commission with the legal authority to allow COMSAT to use INTELSAT capacity for U.S. domestic service. See 47 U.S.C. §701(d) ("It is not the intent of

Congress by this Act to preclude the use of the [INTELSAT] communications satellite system for domestic communications services.") While the competitors' concern that INTELSAT could cross-subsidize its U.S. domestic services with revenues from international services subject to less effective competition is not without merit, on balance this concern is assuaged by the limited amount of INTELSAT capacity that potentially could be diverted to U.S. domestic service. Assuming that COMSAT's factual assertions are accurate, only about one percent of total INTELSAT capacity is currently available to offer full continental U.S. (CONUS) service, and this capacity is equivalent to only 2.6 percent of the capacity available in the U.S. domestic market today. See COMSAT at 17. Nevertheless, the addition of this limited amount of capacity may have beneficial effects on competition in the U.S. domestic market and may ease the continuing shortage of domestic occasional use C-band capacity.

To help ensure against any abuse attributable to COMSAT/INTELSAT market power in international satellite communications, the Commission could place a limit on the amount of INTELSAT capacity that COMSAT may utilize for U.S. domestic service. For example, allowing COMSAT/INTELSAT to provide no more than 5 percent of total U.S. domestic satellite capacity would serve the public interest by allowing the entry of a new competitor at a capacity level high enough to help ease the current tightness of the domestic market but low enough that INTELSAT would be unable

to engage in anti-competitive actions adversely affecting the U.S. domestic marketplace.

V. THE INITIAL COMMENTS DEMONSTRATE THAT THE COMMISSION SHOULD NOT IMPLEMENT THE ECO-SAT TEST THROUGH INDIVIDUAL EARTH STATION APPLICATIONS

In their initial comments, the Networks opposed the Commission's proposal to implement the ECO-Sat test on a case-by-case basis through individual end user applications for earth station licenses. Networks at 19-21. Several parties submitted initial comments consistent with the Networks' recommendation. Keystone, for example, explained that U.S. earth station licensees do not have the resources to undertake the reciprocity analysis required under the proposed ECO-Sat test. Keystone at 2-3. COMSAT recommended that the non-U.S. satellite operator be allowed to apply directly for ECO-Sat authority. COMSAT at 34-35. Similarly, AT&T provided three reasons why the non-U.S. satellite operator should be allowed to make the ECO-Sat showing, rather than requiring each individual U.S. earth station operator to do so: 1) the non-U.S. satellite operator will have superior access to relevant information, 2) it would avoid the need for multiple earth station licensees to make the same showing, and 3) it would enable routine licensing of additional U.S. earth stations once an ECO-Sat showing has been made. AT&T at 9.

To the extent the Commission adopts any ECO-Sat test, it also should adopt the recommendations described above and in the Networks' initial comments. Such modifications appropriately would place the regulatory burden of meeting the ECO-Sat test upon the

entities with the most at stake and with the best access to relevant information. Moreover, once a non-U.S. satellite receives ECO-Sat authority for a particular service, all U.S. earth station licensees should be allowed to access the non-U.S. satellite for that service without delay.[2/]

2/ The Commission should reject the proposals of several U.S. space station operators which recommend that the Commission apply the ECO-Sat test to earth station applications filed prior to issuance of the Commission's DISCO II decision. See, e.g., Columbia at 9-10; Hughes at 19. Under no circumstances should broadcasters and cablecasters seeking access to non-U.S. satellites to cover fast-breaking news events or to bring other time-sensitive programming materials to the U.S. be subject to ECO-Sat application obligations in the period before the Commission actually determines whether they should be subject to the ECO-Sat test in the first place.

VI. CONCLUSION

For the foregoing reasons, the Commission should take action consistent with the views expressed herein and in the Networks' initial comments.

Respectfully submitted,

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August 16, 1996

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CERTIFICATE OF SERVICE

I, Marcia Devens, do hereby certify that true and correct copies of the foregoing, "REPLY COMMENTS OF CAPITAL CITIES/ABC, INC., CBS INC., NATIONAL BROADCASTING COMPANY, INC. AND TURNER BROADCASTING SYSTEM, INC.," were served by hand or first-class U.S. Mail, postage prepaid, this 16th day of August, 1996, on the following:

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